



California Public Employees' Retirement System
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Special:

**TO: ALL CONTRACTING AGENCIES, COUNTY
SUPERINTENDENTS OF SCHOOLS, STATE AGENCIES AND
EMPLOYEE REPRESENTATIVES**

SUBJECT: SAFETY UNIFORMS

The purpose of this Circular Letter is to clarify the statutes, regulations and procedures related to the reporting of allowances for the purchase, rental and/or maintenance of safety uniforms (or the value of such items) provided to employees. Commonly, such safety uniforms are identified by the brand name "Nomex" which is an engineered material blend that protects employees against a variety of job related dangers while meeting or exceeding the requirements of the National Fire Protection Association and CalOSHA. Such protective uniforms made with Nomex and Nomex-like material blends, are considered an item of health and safety. Based upon the unique properties of Nomex and Nomex-like materials or fabrics, the governing statute, regulation, procedure and past court decisions, it is CalPERS' determination that any allowances provided for the purchase, rental and/or maintenance costs of such uniforms are **not** "compensation earnable."

Uniform allowance as defined under the California Code of Regulations Section 571(a) specifically excludes items that are provided for the personal health and safety of employees and are not a ready substitute for personal attire that the employee would otherwise have to purchase. Uniforms made of Nomex and Nomex-like material blends are not a ready substitute for personal attire because the inherent qualities of the fabric serve a health and safety purpose.

BACKGROUND SUMMARY

Nomex and Nomex-like material blends have safety qualities which make the material flame resistant; dissipate static; screen blood-borne pathogens; does not burn or melt; and provides a host of other safety features. As a result of the wide range of safety features that Nomex and Nomex-like material blend uniforms provide to the wearer, safety and some miscellaneous employees may be required to wear such uniforms (e.g., petrochemical workers) and in both cases, the value of, or any allowances provided for the purchase, rental and/or maintenance costs of such uniforms are **not** reportable to CalPERS.

Most commonly, Nomex and Nomex-like material blend uniforms are provided to fire fighters. The CalOSHA standards require that body protection be provided for each firefighter when exposed to the hazard of structural fire fighting activity. Body protection is defined as protective attire that is flame resistant.

Cal-OSHA:

California Code of Regulations (CCR) Section 3406 (a) provides, in pertinent-part:

Body protection shall be provided for each firefighter when exposed to the hazards of structural firefighting activity. Body protection shall consist of turnout clothing or an appropriate combination of a turnout coat and protective clothing meeting the requirements of Section 3406 (c).

Section 3406 (c) provides, in pertinent-part:

Protective clothing, other than turnout clothing, shall meet the following minimum performance requirements:

- (1) Flame Resistance. Test results shall not exceed 6.0 inches average char-length.
- (2) Ignition of the material shall not produce any melting and dripping of molten or flaming material.
- (3) Garments shall be certified to meet the requirements of Section 3406 (c)(1), flame resistance; and as defined in Section 3402.

Section 3402 provides, in pertinent-part:

Flame Resistance. A property of materials which causes resistance to ignition or combustion, provided through the use of inherently flame resistant materials, or materials treated to be flame resistant....

The CalPERS Procedures Manual page 3-5 states, in pertinent-part:

Uniforms and Uniform Allowances are reportable for both miscellaneous and safety members, regardless of how the uniform is supplied. Refer to California Code of Regulations Section 571(a) for further detail.

The California Public Employees' Retirement Law Government Code Section 20636 (a) and (c)(6) provides, in pertinent part:

'Compensation earnable' by a member means the payrate and special compensation of the member...

A uniform allowance, the monetary value of employer-provided uniforms...shall be included as special compensation and appropriately defined in those regulations.

The California Code of Regulations Section 571 (a)(5) provides, in pertinent-part:

Compensation paid or the monetary value for the purchase, rental and/or maintenance of required clothing which is a ready substitute for personal attire the employee would otherwise have to acquire and maintain. This excludes items that are for personal health and safety such as protective vests, pistols, bullets, and safety shoes.

In *Rose v. Hayward* (1981) the court provided that uniform allowance provided an employee for the purchase, rental and/or maintenance of a uniform (or the value of) which is a **ready substitute** for personal attire should be reported to CalPERS.

If you have any questions please call the Compensation Review Unit at (916) 326-3837, or write to: Actuarial & Employer Services Division, P.O. Box 942709, Sacramento, CA 94229-2709.

Kenneth W. Marzion, Chief
Actuarial & Employer Services Division